

**DEPARTMENT OF TRANSPORTATION - District 4 Toll Bridge Program**

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Kiewit-FCI-Manson, JV  
220 Burma Rd.  
Oakland, CA 94607

Attn: Mr. Lee Zink  
Project Director

February 26, 2007

Contract No. 04-0120E4  
04-SF-80-13.4, 13.8  
SAS T1 & E2 Foundations  
SFOBB-ESSSP

Letter No. 05.003.01-002902

Subject: Response to Transmittal No. 488, Revision No. 00 (Notice of Potential Claim #04-012207)

Dear Lee,

The Department has reviewed Kiewit-FCI-Manson (KFM) Transmittal No. 488, Revision No. 00, dated February 6, 2007, which provided the Contractor's supplemental notice of potential claim (NOPC) No. 04 regarding additional payment for work performed to incorporate a series of conflict resolutions resolved via the RFI process into the Integrated Shop Drawings (ISD).

The Department understands your position to be that "Specification Section 5-1.0105 of the Special Provisions is ambiguous, vague and incomplete, in terms of the required magnitude and scope of effort necessary for implementation of the ISD work into the project" and that "During the development of the ISD's, numerous reinforcing steel conflicts were encountered that required several design changes to resolve. These issues were raised via KFMM RFI's # 100, 102, 105, 106, 119, 120, 121, 147, 112, 113, 114, 122, 123, 124, 125, 130, 131R1, 132, 133, 136, 137, 138, 140, etc " and that "This additional scope of work is beyond that defined in the Special Provisions, as the nature of the conflicts and the subsequent design changes could not have been reasonably contemplated at bid time".

Section 5-1.105 "Integrated Shop Drawings" of the Special Provisions was discussed by the Contractor and the Department during the meeting of August 17, 2004, and guidelines were established on how to handle specific ISD work as extra.

After a review of the job records, the Department has found that RFI's # 100, 102, 105, 106, 119, 120, 121, 147, 112, 113, 114, 122, 123, 124, 125, 130, were resolved before December 2, 2006, the date when the Contractor and the Department signed Contract Change Order (CCO) No. 29, compensating the Contractor with \$ 81,000,000.00 and providing a time extension of 310 days as full and complete compensation to resolve all issues related to restarting the contract and establish a new contract price for the completion of the contract.

Included in the costs that KFM submitted as part of the negotiations for CCO No. 29 was a claim from Norcal Structural (NS) -at that time AGCE- for all issues known as of that date. Compensation for any extra work that may or may not have been part of incorporating KFM RFI's # 100, 102, 105, 106, 119, 120, 121, 147, 112, 113, 114, 122, 123, 124, 125, and 130, all of which were responded to by the Department prior to the Contractor's signing CCO No. 29, is therefore included in the full and complete compensation provided in CCO No. 29.

The Department has also found that resolution of KFM RFI # 131R01 is a Contractor's proposed solution that was approved by the Engineer, and therefore per Section 5-1.105 "Integrated Shop Drawings," of the Special Provisions and the agreements reached by the Contractor and the Department on the meeting of August 17, 2004, this is contract work and no additional compensation is warranted.

Finally, the Department reminds the Contractor that the Contractor is required by Section 9-1.07B, "Final Payment and Claims," of the Standard Specifications, and Section 5-1.031 "Final Payment and Claims," of the Special Provisions to provide timely written statement of all claims. The Contractor first issued a letter claiming compensation for these RFIs as extra work on December 6, 2006, more than two years after some of these costs were supposedly incurred. The late submittal of this claim has precluded the Department from taking alternative courses of action to address the issue.

Based on our investigation and the information you provided, the Department finds no contractual basis to support your claim.

Please provide a response that supports agreement or disagreement with the Department's analysis of the claim. The Contractor's attention is directed to Section 9-1.04 "Notice of Potential Claim" of the Special Provisions if he wishes to further pursue this potential claim as specified in the contract.

If you have any question or need additional information, please contact this office.

Sincerely,

Pedro J. Sanchez  
Resident Engineer

cc: R. Morrow  
P. Sanchez  
M. Woods  
M. Vilcheck

file: 05.003.01, 62.001.04